



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1212

[Document Number AMS-SC-18-0016]

Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order; Change in Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on changing the National Honey Board (Board) importer-handler member and alternate to an importer member and alternate. The Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Order) is administered by the Board with oversight by the U.S. Department of Agriculture (USDA). This proposal would also update the definition for the term Board to reflect current practices, and make clarifying and conforming changes to other provisions of the program.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments may be submitted on the internet at: <http://www.regulations.gov> or to the Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue, SW., Room 1406-S, Stop 0244, Washington, DC

20250-0244; facsimile: (202) 205-2800. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Sue Coleman, Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue, SW., Room 1406-S, Stop 0244, Washington, DC 20250-0244; telephone: (202) 378-2569; facsimile: (202) 205-2800; or electronic mail: Sue.Coleman@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposal affecting 7 CFR part 1212 is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action

falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' " (February 2, 2017).

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This proposal invites comments on changing the importer-handler member and alternate to an importer member and alternate on the Board under the Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Order). The Order is administered by the Board with oversight

by USDA. Under the Order, assessments are collected from first handlers and importers and used for research and promotion projects designed to maintain and expand the market for honey and honey products in the United States and abroad. This proposal would change the importer-handler representatives to importer representatives and make clarifying and conforming changes to other provisions of the program. This action was unanimously recommended by the Board in October 2017 and would allow more importers to be eligible to serve on the Board.

Section 1212.46 of the Order provides authority for the Board to recommend amendments to the Order. Section 1212.40 of the Order provides that the Board have ten members - three first handlers, two importers, one importer-handler, three producers, and one marketing cooperative representative. Each member shall have an alternate. Currently, the eligible importer-handler member and alternate must import at least 75 percent of the honey or honey products they market in the United States and handle at least 250,000 pounds annually. With the proposed amendment, the total number of Board representatives would remain at ten, but importer representatives would increase from two to three representatives and the importer-handler member would be removed. Handlers would continue to be represented with three members on the Board. A corresponding adjustment would be made to the alternate representatives for each member.

This action would increase the pool of importer nominees eligible to serve on the Board and reflect the current distribution of the industry.

U.S. honey imports have dramatically increased from 104,984 metric tons in 2008 to 203,534 metric tons in 2017. In comparison, U.S. honey production has decreased. USDA's National Agricultural Statistics Service estimates U.S. honey production from producers with 5 or more colonies at 164 million pounds in 2008 and at 148 million pounds in 2017.¹ The proposed changes to the Board would reflect the distribution of the production of honey and the quantity of the honey and honey products imported into the United States.

Nominations to the Board are made by qualified national organizations and these organizations were consulted before the Board's recommendation. No qualified national organizations were opposed to the recommendation.

The Board met on October 26, 2017, and unanimously recommended that the importer-handler member and alternate become an importer member and alternate. This should allow more importers to be eligible to serve on the Board. Section 1212.40 of the Order is proposed to be revised accordingly. Conforming changes would be made to remove references to the importer-

¹ USDA, National Agricultural Statistics Service, Honey, March 14, 2018, p. 3, <http://usda.mannlib.cornell.edu/usda/current/Hone/Hone-03-14-2018.pdf>

handler representative by removing § 1212.12 and revising §§ 1212.22, 1212.41, and 1212.42(b).

The current importer-handler member and alternate were appointed to the Board for a term that began on January 1, 2018 and ends on December 31, 2020. The importer-handler member and alternate would remain in their positions until their term expires on December 31, 2020. The following term beginning on January 1, 2021, would be filled by an importer member and importer alternate.

Finally, this proposal would revise the term Board as defined in § 1212.2 from the 'Honey Packers and Importers Board' to the 'National Honey Board' to reflect current practices. The term as it appears in § 1212.40 and in the undesignated heading preceding § 1212.40 would also be revised to read 'National Honey Board.'

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small

agricultural producers as those having annual receipts of no more than \$750,000, and small agricultural service firms (first handlers and importers) as those having annual receipts of no more than \$7.5 million.

The Board reported that there were about 785 importers and 40 first handlers of honey and honey products covered under the program during the 2017 fiscal period. Fourteen out of the 40 first handlers (35 percent) and 23 out of the 785 importers (3 percent) accounted for 91 and 90 percent of the assessments in their respective categories. Total assessments for 2017 were \$8.87 million, of which \$2.09 million (24 percent) were paid by first handlers and \$6.78 million (76 percent) were paid by importers. This data can be used to compute an estimate of average annual revenue from honey sales from each of these categories, which in turn helps to estimate the number of large and small first handlers and importers. As mentioned above, 14 first handlers account for 91 percent of the domestic assessments. Multiplying first handler assessments in 2017 of \$2,091,881 by 0.91 and then dividing by 14 yields an average annual assessment of \$135,972 for the first handlers in this category. Dividing this figure (\$135,972) by the assessment rate of 1.5 cents per pound (\$0.015) yields an average quantity per first handler of 9.065 million pounds. Multiplying 9.065 million pounds by the average 2017 U.S. domestic price of \$2.16

per pound² yields an average, annual honey revenue per handler of \$19.58 million, which is well above the SBA threshold of \$7.5 million. It should be noted that this revenue estimate is based on the average price at the producer level, and the \$19.58 million is an estimate of the total value at which the average size handler acquired the honey from producers. Therefore, most of the 14 first handlers that pay 91 percent of the domestic assessments are likely to be large firms according to the SBA definition.

An equivalent computation can be made for the 23 importers who paid 90 percent of the \$6,778,147 in assessments in 2017. Of the 23 importers, the average assessment per importer was \$265,741. Dividing the average assessment per importer by the assessment rate of \$0.015 per pound yields an average quantity per importer estimate of 17.716 million pounds.

For honey imports, the equivalent of the season average price for domestic honey is referred to as a "unit value." The unit value of \$1.23 per pound is computed by dividing annual imported honey value of \$550.16 million by average quantity of 448.72 million pounds³. Multiplying the \$1.23 unit value by the average quantity of 17.716 million pounds yields average annual

2 USDA, NASS, Honey, March 14, 2018, p. 3, <http://usda.mannlib.cornell.edu/usda/current/Hone/Hone-03-14-2018.pdf>.

3 USDA, AMS, SCP, MND, National Honey Report, February 26, 2018, p. 10, <https://www.ams.usda.gov/mnreports/fvmhoney.pdf>.

honey revenue per importer figure of \$21.790 million, almost three times the SBA threshold figure of \$7.5 million for a large firm. Therefore, the majority of the 23 importers that pay 90 percent of the assessments are large firms, according to the SBA definition.

Comparable computations can be made to determine the average 2017 honey revenue for the 26 first handlers and 762 importers that paid 9 and 10 percent, respectively, of the assessment in the first handler and importer categories. The first handler and importer average annual honey revenue figures are approximately \$1,043,000 and \$17,000, respectively, indicating that the vast majority are small businesses (in terms of honey sales), under the SBA large business threshold of \$7.5 million in annual sales.

Based on the foregoing, the majority of first handlers and importers may be classified as small entities.

This proposed rule invites comments on changing the importer-handler Board member and alternate, as specified in section 1212.40 of the Order, to an importer member and alternate. The Order currently requires one importer-handler representative on the Board who must import at least 75 percent of the honey or honey products they market in the United States and handle at least 250,000 pounds annually. The U.S. honey

industry has experienced dramatic increases in imported honey and honey products, as the domestic production has decreased. Thus, the Board unanimously recommended that the importer-handler representative become an importer representative. This would allow for a greater pool of importer nominees to be eligible to serve on the Board. Conforming changes would also be made to remove § 1212.12 and revise §§ 1212.22, 1212.41, and 1212.42 (b). Finally, this proposal would update the term Board to reflect current practices (§ 1212.2, the heading preceding § 1212.40 and § 1212.40). Authority for this action is provided in section 1212.46(d) of the Order.

Relaxing the eligibility requirements for importer representatives on the Board is administrative in nature and would have no economic impact on entities covered under the program. This change would help increase the number of importers who would be eligible to serve on the Board. Eligible producers, first handlers, and importers interested in serving on the Board would have to complete a background questionnaire. Those requirements are addressed later in this proposal in the section titled ***Reporting and Recordkeeping Requirements***.

Prior to arriving at this proposed action, the Board consulted with the qualified national organizations that make the nominations to the Board. Alternatives that were considered included making no changes and adjusting the eligibility

requirements. However, in considering the distribution of the production of honey and the quantity of honey and honey products imported into the United States, the Board concluded that revising the importer-handler representative to an importer representative would be an accurate reflection of the industry and would increase the pool of eligible importers.

Reporting and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are imposed by the part have been previously approved by OMB under OMB control number 0581-0093. Additionally, Board nominees (including producers) must submit a Background Information form (AD-755) to ensure they are qualified to serve on the Board. The time to complete that form is estimated at 30 minutes per response. The background form is approved under OMB control no. 0505-0001. This proposed rule would not result in a change to the information collection and recordkeeping requirements previously approved and would impose no additional reporting requirements and recordkeeping burden on honey producers, first handlers, or importers.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies. Finally,

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

This action was discussed with the qualified national organizations. The Board met on October 26, 2017, and unanimously recommended changing the importer-handler representative to an importer representative. All of the Board's meetings are open to the public and interested persons are invited to participate and express their views.

AMS has performed this initial RFA regarding the impact of this proposed action on small entities and invites comments concerning potential effects of this action.

USDA has determined that this proposed rule is consistent with and would effectuate the purposes of the 1996 Act.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1212

Administrative practice and procedure, Advertising, Consumer information, Honey Packer and Importer promotion, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1212 is proposed to be amended as follows:

**PART 1212— HONEY PACKERS AND IMPORTERS RESEARCH, PROMOTION,
CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER**

1. The authority citation for 7 CFR part 1212 continues to read as follows:

Authority: 7 U.S.C. 7411-7425; 7 U.S.C. 7401.

2. Revise § 1212.2 to read as follows:

§ 1212.2 Board.

“Board” or “National Honey Board” means the administrative body established pursuant to § 1212.40, or such other name as recommended by the Board and approved by the Department.

3. Remove and reserve § 1212.12.

4. Revise § 1212.22 to read as follows:

§ 1212.22 Qualified national organization representing importer interests.

“Qualified national organization representing importer interests” means an organization that the Secretary certifies as being eligible to nominate importer and alternate importer members of the Board under § 1212.42.

5. Revise the undesignated center heading preceding § 1212.40 to read “National Honey Board.”

6. Revise 1212.40 to read as follows:

§ 1212.40 Establishment and membership.

The National Honey Board is established to administer the terms and provisions of this part. The Board shall have ten

members, composed of three first handler representatives, three importer representatives, three producer representatives, and one marketing cooperative representative. In addition, each producer representative must produce a minimum of 50,000 pounds of honey in the United States annually based on the best three-year average of the most recent five calendar years, as certified by producers. The Secretary will appoint members to the Board from nominees submitted in accordance with § 1212.42. The Secretary shall also appoint an alternate for each member.

7. Revise § 1212.41 to read as follows:

§ 1212.41 Term of office.

Each Board member and alternate will serve a three-year term or until the Secretary selects his or her successor. No member or alternate may serve more than two consecutive terms. Each term of office will end on December 31, with new terms of office beginning on January 1.

8. Revise § 1212.42 paragraph (b) to read as follows:

§ 1212.42 Nominations and appointments.

* * * * *

(b) All qualified national organizations representing importer interests will have the opportunity to participate in a nomination caucus and will, to the extent practical, submit as a group a single slate of nominations to the Secretary for importer positions and the importer alternate positions on the

Board. If the Secretary determines that there are no qualified national organizations representing importer interests, individual importers who have paid assessments to the Board in the most recent fiscal period may submit nominations.

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Dated: September 26, 2018

Bruce Summers
Administrator

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